

ST 19-05

Tax Type: Sales Tax

Tax Issue: Exemption from Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

MINISTRIES D/B/A ABC CENTER,
Applicant

**No. XX-ST-XXX
Letter ID XXXXXXXX
DENIAL OF SALES TAX
EXEMPTION**

**Administrative Law
Judge**

Ted Sherrod

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Robin Gill on behalf of the Illinois Department of Revenue; *JANE DOE*, Board President, *MINISTRIES D/B/A ABC CENTER*, *pro se*.

Synopsis:

On July 31, 2018, the Illinois Department of Revenue (hereinafter the “Department”) issued a Taxpayer Notification Sales Tax Exemption Denial denying the request of *MINISTRIES D/B/A ABC CENTER* (hereinafter “Applicant”), that the Department issue it an exemption identification number so that it could purchase tangible personal property free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On August 20, 2018, the Applicant protested the Department’s decision and requested a hearing. The sole issue to be determined in this matter is whether the Applicant qualifies for an exemption identification number as “a

corporation, society, association, foundation or institution organized and operated exclusively for ...religious ... purposes...[.]” 35 **ILCS** 105/3-5(4); 35 **ILCS** 120/2-5(11).

Prior to the convening of any evidentiary hearing, the parties agreed to certain stipulations, which are enumerated below, and further agreed to forego an evidentiary hearing in this case and to allow it to be decided based upon the stipulated record including documents and exhibits contained in pages 1 through 15 of the attachments thereto. For the reasons enumerated below, I recommend that this matter be decided in favor of the Department.

Findings of Fact:

I find the facts to be as stipulated between the parties in the “Stipulation of Facts and Waiver of Oral Hearing” (“Stipulation”) filed February 19, 2019, which are as follows:

1. The Applicant has filed a sales tax exemption application. Stipulation (“Stip.”) 1.
2. The Applicant has filed a timely written request, pursuant to 35 **ILCS** 200/8-35, for a formal hearing of the Department’s denial of its application, setting forth the Applicant’s arguments as to why the denial was incorrect and as to why the denial should be reconsidered and reversed. Stip. 2.
3. The Applicant has filed an appeal based on whether the Applicant is organized exclusively for religious purposes under section 3-5(4) of the Use Tax Act (35 **ILCS** 105/3-5(4)) and section 2-5(11) of the Retailers’ Occupation Tax Act (35 **ILCS** 120/2-5(11)). Stip. 3.
4. Attached to the Joint Stipulation of Facts and Waiver of Oral Hearing is the Department’s Exhibit #1, which includes the exemption application, the denial by the Department, the Applicant’s request for hearing and other various documents offered by the Applicant. Stip. 4.

In addition to the foregoing facts, based upon the documentary evidence contained in the record, I further find as follows.

5. The presumed correctness of the Department's case is established by the admission into evidence of the Department's Taxpayer Notification Sales Tax Exemption Denial, wherein Applicant's request for exempt status was denied. Department Exhibit ("Ex.") 1, p. 3.
6. Applicant is an Illinois not for profit corporation having as its stated purpose, as indicated by its by-laws, the following:

ARTICLE II. PURPOSE

ABC CENTER is organized exclusively for charitable, religious, and educational purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code. *ABC* is a progressively oriented multi-faith partnership serving the university students and the surrounding area as a welcoming community committed to a spiritual awareness that integrates peace, justice and ecological sustainability.
Department Ex. 1, p. 12.

7. In correspondence to the Department dated November 28, 2018 addressed to Robin Gill, the Applicant describes its purpose and function as follows: "As for the purpose of the organization, we manage the *ABC CENTER* building to provide space for religious groups without their own building to meet." Department Ex. 1, p. 6. The activities taking place at the Applicant's center are described by the Applicant as follows: "Our building hosts the following religious groups: ... XXXX ... XXXX ... XXXX ... XXXX Group ... XXXX-group...XXXX Group... XXXX ... XXXX." Department Ex. 1, p. 11. The Applicant's building also provides space for a restaurant called *DEF CAFE* which is affiliated with the *XYZ CHURCH*. Department Ex. 1, p. 6.
8. Applicant is a membership organization having as its members religious and religious affiliated organizations, their members and other individuals "who affirm the purpose of *ABC*

CENTER, pledge support with finances and services, and participate in accord with the guidelines and spirit of *ABC CENTER*.” Department Ex. 1, p. 12. Use of the Applicant’s building is limited to these members. *Id.*

9. The Applicant leases property located at XXXX, *ANYWHERE*, Illinois from its title owner, *GHI UNIVERSITY*. Department Ex. 1, p. 5. The aforementioned property is exempted from real estate taxes “under *GHI UNIVERSITY*.” *Id.*
10. The Applicant’s by-laws limit membership in the Applicant to “religious and spiritual groups and individuals who affirm the purposes of [the Applicant], pledge support with finances and services, and participate in accord with the guidelines and spirit of [the Applicant].” Department Ex. 1, p. 12.
11. Applicant’s by-laws provide that its daily business affairs shall be managed by a Board of Directors (“Board”). *Id.* Members of the Board serve three-year terms. These by-laws state that membership on the Board is to include two representatives of the *ABC CHURCH*, *DEF CHURCH*, *GHI CHURCH*, *JKL CHURCH*, up to two members of the Quaker, Muslim, Hindu, Buddhist and Jewish communities, members of other religious denominations, three members at large and three student members “preferably from the *ABC Student Organization*.” Department Ex. 1, pp. 12-13. The number of Board members cannot exceed twenty. *Id.* Pursuant to the by-laws, the officers of the Board include the Board’s president, vice president, secretary and treasurer who are elected annually by a majority of the Board. Department Ex. 1, p. 13.
12. Applicant’s by-laws also prescribe specific duties to be performed by the Board and its officers. Department Ex. 1, pp. 12-13. They also provide that in the event of dissolution, the

Applicant shall donate any remaining monies to other organizations having objectives similar to the Applicant's. Department Ex. 1, pp. 13-14.

13. The Applicant obtained an exemption from federal income tax on February 27, 2014. Department Ex. 1, p. 15. The Internal Revenue Service granted this exemption pursuant to section 501(a) of the Internal Revenue Code ("Code"), based upon its determination that the Applicant qualified as an organization described in section 501(c)(3) of the Code. *Id.*
14. The financial information produced by the Applicant, consisting of a list of the Applicant's income and expenses for 2018 and a summary of income sources and expenses, indicate that the Applicant's support came from individual contributors that the Applicant solicited through various fundraising techniques and from rents charged the Applicant's members. Department Ex. 1, pp. 7-10. The Applicant also received rental income from the *DEF CAFE*. *Id.* The record contains no audited or unaudited financial statements prepared by, or on behalf of, the Applicant for 2018 or for any year preceding 2018.

Conclusions of Law:

The Retailers' Occupation Tax Act ("ROTA") imposes a Retailers' Occupation Tax ("ROT") on persons engaged in the business of selling at retail tangible personal property. 35 **ILCS** 120/2. A "sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased for valuable consideration ... [.] 35 **ILCS** 120/1. The Use Tax Act ("UTA") imposes a use tax ("UT") on the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 **ILCS** 105/3.

The Applicant seeks an exemption number permitting it to purchase tangible personal property at retail without incurring use tax. The mechanism in the Illinois statutes for procurement of an exemption identification number for ROT purposes is found at 35 **ILCS** 120/1g, entitled “Exemption identification number.” That section of the statute states: “On or before December 31, 1986, except as hereinafter provided, each entity otherwise eligible under exemption (11) of Section 2-5 of this Act and on and after the effective date of this amendatory Act of the 92nd General Assembly each entity otherwise eligible under exemption (9) of Section 2-5 of this Act shall make application to the Department for an exemption identification number.” Exemption eleven (11) of section 2-5 of the ROTA (35 **ILCS** 120/2-5(11)) states:

§ 2-5. Exemptions. Gross receipts from proceeds from the sale of the following tangible personal property are exempt from the tax imposed by this Act:

... (11) Personal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or to a not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older. A limited liability company may qualify for the exemption under this paragraph only if the limited liability company is organized and operated exclusively for educational purposes. On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active identification number issued by the Department.

35 **ILCS** 120/2-5(11).

Therefore, the only way that the Applicant can qualify for an exemption number pursuant to this provision is if it is a government body, a charitable, religious or educational entity, or a not-for-profit entity that is organized and operated primarily for recreation of persons age 55 or older.

The Applicant seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for ...religious ... purposes [.]” 35 **ILCS** 105/3-5(4); 35 **ILCS** 120/2-5(11). The issue in this case is whether

the evidence presented by the Applicant establishes that it qualifies for the exemption number it seeks.

The Applicant claims the right to an exemption from use tax on the grounds that it is organized and operated exclusively for religious purposes. “[W]hen a taxpayer claims that he is exempt from a particular tax, ... the burden of proof is on the taxpayer.” Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981) (*citing* Telco Leasing, Inc. v. Alphin, 63 Ill. 2d 305 (1976); Bodine Electric Co. v. Alphin, 81 Ill. 2d 502 (1980)). The Applicant bears the burden of proving by clear and convincing evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist. 1991). Moreover, it is well established that there is a presumption against exemption and that therefore, exemptions are to be strictly construed with any doubts concerning the applicability of exemptions resolved in favor of taxation. Van’s Material Corp., Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

In Yale Club of Chicago v. Department of Revenue, 214 Ill. App. 3d 468 (1st Dist. 1991), the court expressly approved the application of property tax exemption principles in the analysis of sales and use tax exemptions. *Accord*, Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987); Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2d Dist. 1995).

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides in part as follows:

The General Assembly may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Illinois Constitution Article IX, Section 6

Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within limits imposed by the Constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959).

Pursuant to the authority granted the legislature by Article IX, section 6, the legislature has enacted section 2-5(11) of the ROTA (35 ILCS 120/2-5(11)) which states:

§ 2-5. Exemptions. Gross receipts from proceeds from the sale of the following tangible personal property are exempt from the tax imposed by this Act:

... (11) Personal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or to a not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older.

Pursuant to its authority to issue reasonable rules and regulations to enforce the Department's statutory powers, granted the Department by 35 ILCS 2505/2505-795, the Department has promulgated rule 86 Ill. Admin. Code section 130.2005(q)(2) which provides, in part, as follows: "[T]he Department takes the position that ...a purchaser cannot be organized and operated exclusively for ...religious purposes if such purchaser is organized and operated as a business enterprise with a view to profit."

In the instant case, the Applicant seeks exemption as a tax-exempt religious society or organization. A "religious" society/organization is one organized by "persons as a stated place for public worship, Sunday schools and religious instruction." People ex rel McCullough v. Deutsche Evangelisch Lutherische Jehovah Gemeinde Ugeanderter Augsburgische Confession, 249 Ill. 132, 136-37 (1911).

The first step in determining whether the Applicant qualifies as a religious organization for tax purposes is to examine the language of its organizational documents. Morton Temple

Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3d Dist. 1987). In describing the Applicant's purposes, the Applicant's by-laws state the following:

ARTICLE II. PURPOSE

ABC CENTER is organized exclusively for charitable, religious, and educational purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code. *ABC* is a progressively oriented multi-faith partnership serving the university students and the surrounding area as a welcoming community committed to a spiritual awareness that integrates peace, justice and ecological sustainability.

Department Ex. 1, p. 12.

This language does indicate that the Applicant is organized in part, for "religious" purposes. The reference to "religious" purposes does provide some evidence that certain aspects of Applicant's operations are founded on tenets promulgated by a duly constituted "religious" society. However mere "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage exclusively in tax exempt activities] do not relieve such an institution of the burden of proof that ... [it] actually and factually [engaged in such activity]." Morton Temple Association, *supra* at 796. Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is an [exempt] organization as it purports to be in its charter." *Id.*

As previously noted, the analysis to be undertaken in making a determination whether the Applicant qualifies for sales and use tax exemptions under sections 120/2-5(11) of the ROTA and 105/3-5(4) of the UTA as an institution organized and operated exclusively for religious purposes is the same as the analysis to be undertaken in determining whether the property used by the Applicant is entitled to exemption from property tax. Yale Club of Chicago, *supra*. In order to receive a property tax exemption as a "religious" organization, the Applicant must establish that its property is used exclusively for religious purposes. First Presbyterian Church of

Dixon v. Zehnder, 306 Ill. App. 3d 1114, 1116 (2d Dist. 1999). The term “exclusively” refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983). In exemption cases involving religious use there are two inquiries the Department must make: (1) does the religious organization assert the challenged purposes and activities are religious; and (2) is that assertion bona fide. Calvary Baptist Church v. Department of Revenue, 349 Ill. App. 3d 325 (4th Dist. 2004).

As a threshold matter, it must be noted that the record in this case indicates that some activities conducted at the Applicant’s center are clearly secular rather than religious in nature. Specifically, in a letter to the Department dated November 28, 2018, the Applicant states that a portion of its center is used to house a restaurant known as the *DEF CAFE*. Department Ex. 1, p. 6. Given this fact, it was incumbent upon the Applicant to show that such secular activities (running a restaurant) are not the predominant uses of the Applicant’s building since the primary use of property must be “religious” in order to establish that such property was “exclusively” used for religious purposes. McKenzie, *supra*. Since the record in this case contains no financial statements and no description of the restaurant operations being conducted or the amount of time and space used for such purposes relative to the time and space used by religious affiliated groups, the evidence contained in the record is insufficient to meet this critical burden of proof.

As previously noted, section 2-5(11) of the ROTA (135 **ILCS** 120/2-5(11) exempts “Personal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or to a not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older.” See also 35 **ILCS**

105/3-5(4) of the UTA. In a property tax exemption case, where the same criteria are applied as in a sales tax exemption case, a religious use means “a use of [property] by a religious society or body of persons as a stated place for public worship, Sunday schools, and religious instruction.” Three Angels Broadcasting Network Inc. v. Department of Revenue, 381 Ill. App. 3d 679, 694 (5th Dist., 2008). While this is not inclusive of everything that might be regarded as a religious use, it is illustrative of the nature of a religious use in the context of property tax exemptions. *Id.* at 695.

In the present case, no evidence was presented that public worship, Sunday schools or religious instruction, or anything resembling the foregoing takes place in the Applicant’s building. The only evidence regarding the activities conducted at the Applicant’s building, other than the activities conducted by the *DEF CAFÉ* discussed above, is the following statement contained in a letter sent to the Department by the Applicant dated November 7, 2018 wherein the Applicant states as follows.

Our building hosts the following religious groups:

XXXX – Meets every Tuesday
XXXX – Meets every Saturday
XXXX – Meets every Monday
XXXX - Meets every Tuesday
XXXX – Meets every Sunday
XXXX - Meets 2d Tuesday of the Month
XXXX – Meets several times a year
XXXX – Meets several times a year
Department Ex. 1, p. 11.

While one can deduce from this disclosure that various programs rooted in religious convictions and principles are conducted at the Applicant’s center, the Applicant’s disclosure is insufficient to clearly and convincingly show that “public worship, Sunday schools, and religious instruction” or any similar activities take place there without a description of the precise nature of the activities alluded to in the Applicant’s correspondence. With the exception of the

aforementioned enumeration of religious affiliated groups using the Applicant's building, the Applicant provided no other evidence concerning whether it is organized for religious purposes. It provided no financial records evidencing its activities and operations and no evidence that it is affiliated with any recognized religious denomination or order.

In providing a forum for various activities of religious affiliated groups, the Applicant's functions are clearly church or religious related. However, as the court noted in Community Renewal Society v. Department of Labor, 108 Ill. App. 3d 773 (1st Dist. 1982), an organization may be "church related" but not actually "operated primarily for religious purposes." Community Renewal Society, *supra* at 781-82. The Applicant's functions in providing a forum for religious activities may indeed help to allow these religious organizations to succeed. However, this, in and of itself, does not necessarily make the Applicant primarily religious.

As previously noted, the "religious purposes" contemplated by the property tax law involve the use of property "as a stated place for public worship, Sunday schools, and religious instruction." People ex rel McCullough, *supra*. In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 767 (4th Dist. 2008), *aff'd*, 236 Ill. 2d 368 (2010), where Provena Covenant was seeking a religious property tax exemption for Provena Hospital, the Court noted that if "public worship, Sunday schools and religious instruction" are illustrative of the nature of religious use, "it must follow that 'religious use' has a determinable nature and that to be religious use, the activity must somehow resemble the activities listed in McCullough."

While the Applicant no doubt helps members of various religious faiths sustain their religious beliefs and lifestyles, the record contains insufficient evidence to support a finding that it has as its primary purpose activities that somehow resemble McCullough. Consequently, I

find that the Applicant has not shown that it is entitled to the religious exemption as an organization exclusively engaged in the pursuit of religious purposes.

Even if the Applicant could prove that it is organized and operated primarily for religious purposes, it would only be entitled to exemption if it also could show that its activities are conducted without a view to profit. ROTA rule 130.2005(q)(2) expressly bars exemption where a purchaser seeking exemption as a religious organization is organized and operated as a business enterprise with a view to profit. 86 Ill. Admin. Code section 130.2005(q)(2). For the following reasons, I conclude that the Applicant in the instant case is organized and operated with a view to profit.

As indicated in the record, the Applicant's by-laws provide that "membership and participation [i.e. use of the Applicant's building] is open to those religious and spiritual groups and individuals who pledge support with finances... and participate in accord with the guidelines and spirit of *ABC CENTER*." Department Ex, 1, p. 12 (emphasis added). This by-law provision essentially limits "participation" which is use of the Applicant's building to members of the Applicant making "financial" contributions. The foregoing by-law provision indicates that, at its core, the Applicant is organized to provide its members with access to its facility to conduct religious related activities when they need it in return for financial compensation. The record also indicates that the Applicant receives rent for the use of space in its building from *DEF CAFE*. Department Ex. 1, pp. 7-10.

Although the Applicant has certain functions related to religious groups, one of its primary objectives is receiving money for the use of its building from its members and from the restaurant operated at this location. In the absence of evidence to the contrary, this objective is unmistakable evidence that the Applicant's use of this property is with a view to profit. As a

result, ROTA rule 130.2005(q)(2) mandates that the Applicant not be exempt from tax. In sum, I find that the Applicant has failed to meet its burden of showing clearly and convincingly that it is not organized and operated with a view to profit.

CONCLUSION

The Applicant has failed to meet its burden of showing clearly and convincingly that it is entitled to exemption. Accordingly, based upon the foregoing analysis, I find that the Applicant has failed to establish that it qualifies as an institution primarily operated for religious purposes and that it does not use its property with a view to profit, a showing required in order to qualify for the exemption it claims pursuant to section 105/3-5(4) of the UTA, section 120/2-5(11) of the ROTA and Retailers' Occupation Tax regulation 86 Ill. Admin. Code section 130.2005 (q)(2). Yale Club, *supra*. Consequently, it is recommended that the Department's decision to deny the Applicant an exemption identification number be affirmed.

Ted Sherrod
Administrative Law Judge

Date: July 11, 2019